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IN THE

Supreme Court of the United States

October Term, 1976
No. 76-584

UNITED STATES OF AMERICA for the Use of JAMES SINCLAIR, and JAMES SINCLAIR,

Petitioners,

vs.

THE HANOVER INSURANCE COMPANY, a corporation; GAYLORD L. CAMPBELL; TERRY WALTER; and THOMAS CHARLES KUPFERER, JR.,

Respondents.

Memorandum of the Hanover Insurance Company in Opposition.

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Memorandum of the Hanover Insurance Company in Opposition.

I

Summary of the Case.

The Petition of James Sinclair is directed solely toward the decision of the United States Court of Appeals, for the Ninth Circuit, which affirmed the dismissal of the Hanover Insurance Company (hereinafter referred to as Hanover) from the suit brought by Sinclair. The Petition does not concern the remaining defendants.

This case originated with a complaint filed by Sinclair. The complaint alleges a cause of action against Hanover and against United States Marshal,

Gaylord L. Campbell, and Deputy United States Marshals, Terry Walter and Thomas Charles Kupferer, Jr. The District Court dismissed the complaint as to Hanover and United States Marshal, Campbell. Subsequent to the dismissals of Hanover and Campbell, the District Court, based upon a Motion for Summary Judgment, entered a judgment in favor of Walter and Kupferer, and against plaintiff, James Sinclair.

The United States Court of Appeals, for the Ninth Circuit, affirmed the judgment of the District Court, dismissing the action against Hanover. The dismissal of the United States Marshal and the judgment in favor of the deputy Marshals were reversed. The case is presently before the United States District Court for further proceedings.

The complaint alleges a cause of action against Hanover, based solely upon the fact that Hanover had executed and delivered a "United States Marshal" Bond, as surety on behalf of the United States of America as obligee. (The bond was part of the record before the Court of Appeals, Record on Appeal pp. 147-148).

The bond was a position schedule bond for the Department of Justice. The bond contains a Schedule of Positions and lists in great detail each position covered. The bond in part as follows:

> "The Hanover Insurance Company, . . . hereby agrees to indemnify the United States of America, hereinafter termed Obligee,
>
> (1) against any loss or losses up to the bonded amounts stipulated for each United States marshal

> position in the Schedule of Positions, which any marshal may directly or by collusion with others, cause to the Obligee through the failure of such marshal, to effect the faithful performance of duties by himself and his deputies during his continuance in office . . .
>
> (2) against any loss or losses which any individual now or hereafter filling any other position(s) in the Schedule of Positions, . . . may directly or by collusion with others, cause to the Obligee through the failure of such individual while filling such position to effect the faithful performance of the duties . . ."

The term of the bond was from 12:01 a.m., January 1, 1972, to midnight, December 31, 1973. The particular bond in question is no longer in force. The United States of America no longer obtains surety bonds such as the one involved in this action. All such surety bonds for Federal, Civilian and Military personnel have been eliminated. (Pursuant to Public Law 92-310, 86 Stat. 201.)

II

The Writ of Certiorari Should be Denied for Reason That This Case Does Not Concern an Issue of Public Importance or of a Prospective Nature.

The petition concerns itself solely with the dismissal of Hanover from the action. The United States District Court presently has before it, for further proceedings, those aspects of the case which involve the conduct of the United States Marshal and his deputys. It is submitted that that if this case contains any issues of importance beyond the parameters of the case itself,

these issues pertain only to the conduct of the United States Marshal and his deputies.

The petition concerns itself with a very limited question of pertinence, only to James Sinclair and Hanover. The surety bond has expired by its own terms, and Congress, in 1972, rendered this matter a dead issue as concerns the general public by enacting Public Law 92-310 (86 Stat. 201). The statute provides in pertinent part as follows: "No agency of the Federal Government may require or obtain surety bonds for civilian employees or military personnel in connection with the performance of their official duties." (P.L. 92-310, Title 1, § 101 (a), June 6, 1972, 86 Stat. 201.)

In view of the action of Congress, this case has no prospective application and is of such isolated significance, that it should not be before the Supreme Court. The concluding statement of this Court in *Rice v. Sioux City Memorial Park Cemetery* (349 U.S. 70, 75 S. Ct. 614 (1955) is dispositive of the petition before the court and compels its denial. The Court stated,

> "'. . . it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.' Layne & Bowler Corp. v. Western Wells Works, Inc., 261 U.S. 387, 393, 43 S.Ct. 422, 423, 67 L.Ed. 712.
>
> Writ of certiorari dismissed." (349 U.S. at 79, 75 S.Ct. at 619-620).

Conclusion.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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By THOMAS J. CASAMASSIMA,
Attorneys for Respondent
The Hanover Insurance Company.